

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

JAVIER BENITEZ,

Plaintiff,

v.

CITY OF RENO, *et al.*,

Defendants.

Case No. 3:24-CV-00088-CLB

**ORDER DENYING MOTION FOR LEAVE
TO FILE FIRST AMENDED COMPLAINT
AND DENYING MOTION FOR
DISCOVERY EXTENSION**

[ECF Nos. 42, 48]

Before the Court is Plaintiff Javier Benitez's ("Benitez") motion for leave to file an amended complaint, along with a proposed amended complaint. (ECF Nos. 42, 42-1.) Defendant Michael Frady ("Frady") opposed the motion, (ECF No. 46), and Benitez replied, (ECF No. 47). Benitez has also filed a motion for discovery extension. (ECF No. 48.) For the reasons discussed below, Benitez's motion for leave to file an amended complaint, (ECF No. 42), and motion for discovery extension, (ECF No. 48), are denied.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On February 22, 2024, Benitez initiated this action by filing an application to proceed in forma pauperis ("IFP") and a civil rights complaint. (ECF Nos. 1, 3-1, 10.) Benitez's complaint alleges the following: On June 10, 2023, while effectuating an arrest of Benitez, Reno Police Department ("RPD") Officer Frady and numerous other Doe RPD Officers used excessive force by pointing guns at Benitez's head, when he had his hands up and posed no threat and was "not the suspect." (ECF No. 3-1 at 3.) Benitez alleges when the officers pointed their guns at him, it caused him to suffer various mental and emotional injuries, including anxiety, PTSD, and panic attacks. (*Id.*)

On March 5, 2024, this Court screened Benitez's complaint pursuant to 28 U.S.C. § 1915A and recommended that Benitez proceed on a single Fourth Amendment claim based on excessive force during arrest against Defendant Frady. (ECF No. 8.) This Court also recommended dismissal with leave to amend a municipality liability claim against

1 Defendants City of Reno and Reno Police Department and dismissed without prejudice
2 and without leave to amend a false imprisonment claim. (*Id.*) On April 2, 2024, the District
3 Court adopted the Report and Recommendation, allowing Benitez to proceed on a single
4 Fourth Amendment excessive force claim against Defendant Frady and Doe RPD Officers
5 and giving him leave to amend as to the municipality liability claim. (ECF No. 9.) The order
6 explicitly noted that “[i]f the true identity of any of the Doe Defendants comes to light
7 during discovery, [Benitez] may move to substitute the true names of Doe Defendants to
8 assert claims against the Doe Defendants at that time.” (*Id.* at 2 n. 1.) Benitez did not file
9 an amended complaint, and thus the Court ordered that Benitez would proceed on the
10 Fourth Amendment claim against Frady only and ordered the issuance of summons. (ECF
11 No. 11.)

12 On September 26, 2024, Frady filed his answer to the complaint. (ECF No. 18.)
13 Following a case management conference held on November 4, 2024, the Court entered
14 a scheduling order and discovery plan, and set the deadline to amend pleadings by
15 January 3, 2025. (ECF Nos. 28, 29.) On February 6, 2025, Benitez filed a motion to add
16 John Doe Defendants. (ECF No. 38.) On February 21, 2025, Benitez filed a second
17 motion to add John Doe Defendants. (ECF No. 41.) The same day Benitez filed the instant
18 motion for leave to file a first amended complaint. (ECF No. 42.) The Court denied the
19 two motions to add Doe Defendants as moot in light of the filing of the motion for leave to
20 file a first amended complaint, noting the Court would reserve ruling on the motion until
21 the motion was fully briefed. (ECF No. 45.) Benitez’s motion for leave to file a first
22 amended complaint is now fully briefed and ripe for ruling.

23 Finally, Benitez has filed a motion for discovery extension, requesting a 90-day
24 extension of discovery. (ECF No. 48.) The scheduling order and discovery plan set the
25 close of discovery for May 3, 2025. (ECF No. 29.)

26 **II. LEGAL STANDARD**

27 Federal Rule of Civil Procedure 15(a)(2) instructs that “[t]he court should freely
28 give[] leave [to amend a pleading] when justice so requires.” The Ninth Circuit has made

1 clear Rule 15(a) permits liberal application. *Sonoma Cnty. Ass'n of Retired Emps. v.*
 2 *Sonoma Cnty.*, 708 F.3d 1109, 1117 (9th Cir. 2013). Under Rule 15(a), courts consider
 3 various factors, including: (1) bad faith; (2) undue delay; (3) prejudice to the opposing
 4 party; (4) the futility of the amendment; and (5) whether the plaintiff has previously
 5 amended his complaint. *Desertrain v. City of Los Angeles*, 754 F.3d 1147, 1154 (9th Cir.
 6 2014). The factors do not weigh equally; rather, prejudice receives the greatest weight.
 7 *Brown v. Stored Value Cards, Inc.*, 953 F.3d 567, 574 (9th Cir. 2020) (citing *Eminence*
 8 *Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003)).

9 Defendants bear the burden of establishing prejudice, and absent its presence or
 10 a “strong showing” under the other factors, there is a presumption in favor of permitting
 11 amendment. *Eminence Cap., LLC*, 316 F.3d at 1052 (citing *DCD Programs, Ltd. v.*
 12 *Leighton*, 833 F.2d 183, 186-87 (9th Cir. 1987)). When considering prejudice, the court
 13 may weigh against the movant the amended pleading’s great alteration of the litigation’s
 14 nature that requires the opposing party to defend against “different legal theories and . . .
 15 different facts.” *AmerisourceBergen Corp. v. Dialysist W., Inc.*, 465 F.3d 946, 953 (9th
 16 Cir. 2006) (internal quotation omitted). Alone, such alteration is not fatal. *Morongo Band*
 17 *of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990).

18 By contrast, futility “alone can justify the denial of a motion for leave to amend.”
 19 *Nunes v. Ashcroft*, 375 F.3d 805, 808 (9th Cir. 2003) (quoting *Bonin v. Calderon*, 59 F.3d
 20 815, 845 (9th Cir. 1995)). Futility arises when the amendment is legally insufficient,
 21 *Missouri ex rel. Koster v. Harris*, 847 F.3d 646, 656 (9th Cir. 2017), or where the amended
 22 complaint would be subject to dismissal, such as when it violates the statute of limitations.
 23 *Platt Elec. Supply, Inc. v. EOFF Elec., Inc.*, 522 F.3d 1049, 1060 (9th Cir. 2008).

24 **III. DISCUSSION**

25 On February 21, 2025, Benitez filed the instant motion for leave to file a first
 26 amended complaint. (ECF No. 42.) Benitez seeks to name eleven Doe Defendants and
 27 add four claims to his complaint. (See *id.*) Frady argues in opposition that the motion
 28 should be denied as untimely and because the proposed amended pleading is futile. (ECF

1 No. 46.) As discussed above, the scheduling order and discovery plan set the deadline
2 to amend pleadings by January 3, 2025. (ECF No. 29.) Thus, Benitez's motion is untimely.

3 Federal Rule of Civil Procedure 16(b)(4) governs the modification of scheduling
4 orders and discovery plans. Fed. R. Civ. P. 16(b)(4) provides that "[a] schedule may be
5 modified only for good cause and with the judge's consent." The good cause inquiry
6 focuses primarily on the movant's diligence. *DRK Photo v. McGraw-Hill Global Educ.*
7 *Holdings, LLC*, 870 F.3d 978, 989 (9th Cir. 2017).

8 Local Rule 26-3 supplements Fed. R. Civ. P. 16 and provides that discovery plans
9 and scheduling orders may be modified for good cause, provided that a motion to extend
10 is made "no later than 21 days before the expiration of the subject deadline." See LR 26-
11 3; see also LR IA 6-1. "Good cause" is a non-rigorous standard that has been construed
12 broadly across procedural and statutory contexts. See *Ahanchian v. Xenon Pictures,*
13 *Inc.*, 624 F.3d 1253, 1259 (9th Cir. 2010). Requests for extensions of time made before
14 the applicable deadline has passed should "normally ... be granted in the absence of bad
15 faith on the part of the party seeking relief or prejudice to the adverse party." *Id.* (citing
16 4B Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1165 (3d
17 ed. 2004)).

18 Moreover, pursuant to Local Rule 26-3, any request made after this 21-day period
19 will only be granted if "the movant also demonstrates that the failure to act was the result
20 of excusable neglect." LR 26-3. "Excusable neglect" is a flexible, equitable concept, but
21 "inadvertence, ignorance of the rules, or mistakes construing the rules do not usually
22 constitute 'excusable' neglect." *Kyle v. Campbell Soup Co.*, 28 F.3d 928, 931 (9th Cir.
23 1994) (citing *Pioneer Inv. Servs. v. Brunswick Assocs.*, 507 U.S. 380, 391-92 (1993)).

24 In determining whether neglect is excusable, the Court must consider the
25 following factors: (1) the danger of prejudice to the opposing party; (2) the length of the
26 delay and its potential impact on the proceedings; (3) the reason for the delay; and (4)
27 whether the movant acted in good faith. *Bateman v. U.S. Postal Service*, 231 F.3d 1220,
28 1223-24 (9th Cir. 2000) (internal quotations omitted) (citing *Pioneer*, 507 U.S. at 395).

1 The Court should “take into account all the relevant circumstances” when considering
2 these factors. *Cap. One, Nat’l Ass’n v. SFR Inv. Pool 1, LLC*, No. 2:17-cv-00604-RFB-
3 NJK, 2020 WL 6271199 at *4 (D. Nev. Oct. 26, 2020); *see also Pioneer*, 507 U.S. at 395.

4 Benitez claims he delayed filing his motion because he has no legal training, no
5 access to the law library, and he is not allowed to make legal calls while in prison. (ECF
6 No. 42.) However, Benitez has not explained why he waited nearly three months after
7 receiving the Dispatch Report containing the names of the Doe Defendants, (See ECF
8 Nos. 46-1, 46-2), and nearly two months after the deadline for adding new parties or
9 amending the complaint before filing the instant motion. Thus, Benitez’s motion does not
10 establish good cause or excusable neglect which would warrant extending time to file his
11 motion for leave to amend.

12 Nonetheless, having reviewed Benitez’s proposed amended pleading, which
13 seeks to add 11 defendants and 4 claims, the Court finds that the bulk of the *Desertrain*
14 factors weigh against allowing amendment, and, therefore, the Court concludes that
15 amendment is improper, and accordingly, Benitez’s motion is denied.

16 Finally, because the Court is denying Benitez’s motion for leave to amend, his
17 request for a discovery extension is unnecessary at this time, and accordingly, Benitez’s
18 motion is denied.

19 **IV. CONCLUSION**

20 For good cause appearing and for the reasons stated above, **IT IS ORDERED** that
21 Benitez’s motion for leave to file an amended complaint, (ECF No. 42), is **DENIED**.

22 **IT IS FURTHER ORDERED** that Benitez’s motion for discovery extension, (ECF
23 No. 48), is **DENIED**.

24 **IT IS FURTHER ORDERED** that the original complaint, (ECF No. 10), screening
25 order (ECF No. 8, 9), and scheduling order, (ECF No. 29), remain operative in this case.

26 **DATED:** March 24, 2025

27 
28 **UNITED STATES MAGISTRATE JUDGE**